IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1806

FORD MOTOR COMPANY
(CHICAGO STAMPING PLANT)
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

and

LOCAL 588, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF RESPONDENT, UAW LOCAL 588

IRVING M. FRIEDMAN
JEROME SCHUR
KATZ, FRIEDMAN, SCHUR & EAGLE, P.C.
7 South Dearborn Street
Chicago, Illinois 60603

JOHN A. FILLION
General Counsel

M. JAY WHITMAN
Associate General Counsel

LEONARD R. PAGE
Assistant General Counsel
International Union, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Counsel for UAW Local 588

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF CONTENTS

	Page
Index of Authorities	II
Counterstatement of the Question Presented	1
Statement of the Case	2
ARGUMENT	6
I	6
II	13
III	17
CONCLUSION	21
Addendum	Ad 1

INDEX OF AUTHORITIES

Cases	Page
Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971)	9, 13
Anheuser-Busch, Inc. v. IBT Local 633, 511 F.2d 1097 (1st Cir. 1975) *cert. den.* 423 U.S. 975 (1975)	19
Fibreboard Paper Products Corp. v. NLRB, 322 F. 2d 411 (D.C. Cir. 1963) (*per* Burger, J.) 116 U.S. App. D.C. 198, *aff'd* 379 U.S. 203 (1964)	7, 9, 11-13, 15, 18
H. K. Porter Company v. NLRB, 397 U.S. 99 (1970)	8, 9, 15-17, 20
IBT Local 24 v. Oliver, 358 U.S. 283 (1959)	9, 12, 13
Inland Steel Co. v. NLRB, 170 F. 2d 247 (7th Cir. 1948) *cert. den.* 336 U.S. 960 (1949)	16
Marshall v. Barlow's Inc., —— U.S. —— (1978), 98 S. Ct. 1816	16
Miree v. DeKalb County, 433 U.S. 33 (1977)	3
NLRB v. American National Insurance Co., 343 U.S. 395 (1952)	20
NLRB v. Borg-Warner Corp., 365 U.S. 342 (1958)	9, 11, 20
NLRB v. Ford Motor Co., 571 F. 2d 993 (7th Cir. 1978)	6
NLRB v. Washington Aluminum Co., 370 U.S. 9 (1962)	6, 13, 14, 17
Sears Roebuck & Co. v. The San Diego Co. Dist. Carpenters, —— U.S. —— (1978), 98 S. Ct. 1745	16
United States v. Lovasco, 431 U.S. 783 (1977)	3

INDEX OF AUTHORITIES—Continued

Statutes	Page
National Labor Relations Act, *as amended* (NLRA) 29 U.S.C. § 151 *et seq.*	*passim*
Section 2(2), 29 U.S.C. § 152(2)	10
Section 2(3), 29 U.S.C. § 125(3)	11
Section 8(a)(5), 29 U.S.C. § 158(a)(5)	6
Section 8(d), 29 U.S.C. § 158(d)	7, 13, 14, 17
Section 10, 29 U.S.C. § 160	17
Rules	
Supreme Court Rule 40(d)(2)	2
F.R. Civ. Pro. 52	2
Other Authorities	
A. Cox, *The Duty to Bargain in Good Faith*, 71 HARV. L. REV. 1401 (1958)	18
COLLECTIVE BARGAINING NEGOTIATIONS AND CONTRACTS (BNA)	18
LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT OF 1947 (G.P.O. 1948)	9, 10
Shulman, OPINIONS OF THE UMPIRE (FORD MOTOR Co.), Opinion A-117 (1944)	20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1806

FORD MOTOR COMPANY
(CHICAGO STAMPING PLANT)
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

and

LOCAL 588, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW),
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF OF RESPONDENT, UAW LOCAL 588

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether nourishment during the workday, and its various aspects, including food services and prices, are "physical dimensions" of the employer/employee relation-

ship, and therefore "terms and conditions of employment" within § 8(d) of the National Labor Relations Act, *as amended*, 29 U.S.C. § 158(d)?

STATEMENT OF THE CASE

Ford operates a stamping plant in Chicago Heights, an industrial suburb of Chicago. The plant stamps intermediate and large auto parts from sheet metal. It employs about 3,600 production workers, represented by the UAW and its Local 588. (Pet. A. 2).[1]

The plant works around the clock on three shifts. All employees have a 30-minute lunch break and two 22-minute rest periods. (Pet. A. 20, 33-34). The latter are used in part for snacking. Employees may not leave the plant during the 22-minute rest periods, and it is not feasible for them to leave during their lunch period. In consequence, almost no one can leave at lunch—about 12 of 3,600 do so.[2] (Pet. A. 20). Ford does not permit food vending trucks on plant property. (Pet. A. 2, 20).

Employees are permitted to bring their own food into the plant, but it may be eaten only in the cafeterias or vending machine areas. Food brought in "brown bags" may *only* be stored in locker rooms, which are merely ventilated. They are not air-conditioned. Employees have no refrigeration facilities. In the summer the lockers become very "hot and sticky and smelly." Temperatures frequently range from 80 to 100 degrees and

[1] Page references are to the Appendix to the Petition (Pet. A. 1), to the Appendix (A. 2), and to Ford's Brief. (Ford Br. 3).

[2] Ford, in challenging the Circuit Court's finding that workers lacked any alternative to in-plant food, argues that workers could go outside the plant for lunch during the 30-minute lunch period. (Ford Br. 32). However, the Seventh Circuit found that: "All parties agreed that it was not feasible for employees to leave the plant during their food breaks." (Pet. A. 2). Ford did not seek *certiorari* on this issue. Under this Court's Rule 40(d)(2) and F.R. Civ. Pro. 52, Ford is precluded from attacking these fact determinations.

cause food spoilage. Ford has occasionally employed exterminator services because of unsanitary conditions in the locker area.[3]

The Parties' Agreement Concerning Food Services

Since at least 1967, Ford and Local 588 have bargained and agreed on various aspects of in-plant food services. (Pet. A. 4).

Since June 1974, the Local Agreement has provided as follows:[4] There is to be in-plant cafeteria service with a selection of hot entrees, salads and desserts. This selection, plus a sandwich service, will be available during regular lunch periods. Cafeteria supervision is to be available during all lunch periods to insure the parties that employees are served in a reasonable length of time, given adequate service, and supplied with condiments and utensils. In addition, vending machines will be maintained, offering a variety of selections. If a vending machine breaks down, it will receive prompt servicing. The vending machine areas are to be enclosed and air-conditioned.

[3] Ford argues that testimony on the food spoilage was technically hearsay. (Ford Br. 32-33). Since this evidentiary claim was not raised either to the Board or the Court of Appeals, it cannot be raised here. *See, e.g., Miree* v. *DeKalb County*, 433 U.S. 25, 34 (1977); *United States* v. *Lovasco*, 431 U.S. 783, 788 n.7 (1977).

In any event, there was direct testimony, based on first-hand observation, that lockers where food was stored became hot, sticky, smelly, and that exterminators had to be used occasionally to deal with cockroaches, rats, and mice. A. 45-49, 55, 60. General Counsel Ex. No. 2, reproduced in the addendum to this Brief, at Ad 1-5.

[4] The UAW-Ford National Agreement, covers matters common to all plants in the UAW-Ford national bargaining unit (*e.g.*, grievance procedure, pensions, arbitration, no-strike/no lockout). The National Agreement is supplemented by a Local Agreement which concerns only the given plant. Like other plants, this one is covered by both the National Agreement and its own Local Agreement. (Pet. A. 36).

To implement these provisions, and those of the 1970 Local Agreement, Ford's plant has the following food service facilities: There are two air-conditioned cafeterias and five vending machine areas. The larger cafeteria serves hot food from steam tables, and houses vending machines which dispense beverages, hot and cold food, pastry, and candy. This cafeteria seats between 400 and 500 persons. It is open for breakfast between 5 a.m. and 8 a.m., and during lunch periods. The area is open during shift changes, allowing access to the vending machines. The second cafeteria accommodates 50 to 100 persons. It is open for two of the three lunch periods on the day and evening shifts. This cafeteria does not have a steam table or cafeteria service. It has only 12 vending machines. On the plant's work floor, there are five enclosed vending machine areas, which are open during meal and rest periods. Four of these "cribs" accommodate 40 to 50 persons, and the fifth between 75 and 100. The vending machines dispense the same food items available in the smaller cafeteria. (Pet. A. 34).

Ford's Performance Through Providers

Since at least 1967 Ford has turned over performance of its contractual responsibilities to an outside provider —an industrial catering operation. In 1967, the provider was Al Green Enterprises and in 1970 it became ARA Services, Inc.[5]

Under the contract with its provider, Ford allows use of the necessary plant space, and supplies its plant with the needed equipment, utilities and maintenance (*e.g.*, steam tables, refrigerators, ovens). Ford's provider furnishes the vending machines, food, management and labor. (Pet. A. 3).

[5] While Ford happens to have contracted with caterers here, Ford provides in-plant meals to employees at other locations through its *own* food operation. *See: How Ford Motor Dishes up 18,000 Meals a Day*, BUSINESS WEEK (October 27, 1975) at 48, reproduced at Ad 7.

Ford approves its provider's price and portion lists, as well as quality specifications. Ford establishes standards of quality and cleanliness for all equipment. It inspects and enforces compliance. Ford reimburses all direct costs, and pays its provider an allowance for administrative costs and service fees.[6] If gross receipts are less than the costs of operations plus the allowance, Ford reimburses the provider for the difference, up to $52,000 annually.[7] When revenues exceed costs, Ford realizes income. When costs exceed revenues, Ford pays the difference up to that limit. In recent years Ford has subsidized the food service operations. Either Ford or its provider can cancel the contract on 60-days notice. (Pet. A. 82-94).

The Dispute

On or about February 6, 1976, Ford informed Local 588 that the prices of certain cafeteria and vending items would be increased, effective February 9th. There was no previous notice, and Ford did not furnish specific information on the amount of the increases. The Local requested that the increases be postponed until it could discuss the matter with Ford, but Ford refused. The increases went into effect on February 9th. Virtually all food items were raised either 5 or 10 cents. By letter of February 13th, Local 588 asked Ford to bargain concerning "prices and services in cafeteria and vending operations." On February 19th Ford again declined, arguing that "food prices and services are not a proper

[6] The allowance totals 9% of net receipts. (Ford Br. 6).

[7] ARA has publicly described this straight management fee arrangement as permitting "the customer [Ford here] to control menu prices." *Feeding the Big Captive Customers*, BUSINESS WEEK, (October 27, 1975), reproduced at Ad 6-8.

subject for negotiations." (Pet. A. 39, Jt. Ex. 17 & 18, reproduced at Ad 9-11).

Meanwhile, on February 16th, a boycott of the food operations began. A majority of the employees observed the boycott, and most brought their lunches during the period. The boycott of the cafeteria was ended by Local 588's Shop Committee on May 19, 1976, and the boycott of vending machines on June 7, 1976. The onset of hot weather, with consequent spoilage problems with "brown bag" food, was a main cause of its termination. Another reason was the boycott's ineffectiveness in reducing prices. (Pet. A. 40).

Local 588 filed an unfair labor practice charge on April 12, 1976. On May 16, 1976, the Board's General Counsel issued a complaint, alleging that Ford's refusal to bargain on food services and prices violated § 8(a)(5) of the Act, 29 U.S.C. § 158(a)(5). The Board ordered Ford to bargain on food services and prices, and to supply the UAW with information it had requested in these areas. The Seventh Circuit affirmed. *NLRB* v. *Ford Motor Co.*, 571 F.2d 993 (7th Cir. 1978).

ARGUMENT

I

When an employer hires someone, brings that person onto its property to labor for 8 to 10 hours, certain questions are unavoidable: Is the facility habitably warm in the winter? *NLRB* v. *Washington Aluminum Co.*, 370 U.S. 9, 15-16 (1962). Is it dry? Is the air in the building fit to breathe? Is there enough light to work? Are those on the property safe from physical injury? And—at issue here—how is one to stay properly nourished, and able to perform work? These are not arcane or surprising issues. They must be faced by every employer who opens its doors, and by every employee who walks

through them. They are posed by the realities of human physiology. They are, as Mr. Justice Stewart put it, the "physical dimensions" of work. *Fibreboard Paper Products Corp.* v. *NLRB*, 379 U.S. 203 (1964) [8] (Stewart, J. *concurring*):

> In common parlance, the conditions of a person's employment are most obviously the various physical dimensions of his working environment. What one's hours are to be, what amount of work is expected during these hours, what periods of relief are available, what safety practices are observed, would all seem conditions of one's employment. [379 U.S. at 222]

Nourishment, like other physical dimensions of work, is "most obviously" a condition of one's employment. As the Court below observed:

> The food one must pay for and eat as a captive customer within the employer's plant can be viewed as a physical dimension of one's working environment. [Pet. A. 12; 571 F.2d 993, 1000 (7th Cir. 1978)]

Nourishment is one of the factors in the employment situation which directly controls physical well-being on the job. Such factors are, in fact, the *most* obvious of the "terms and conditions of employment." § 8(d) of the Act,[9] 29 U.S.C. § 158(d). Whether we are "within the literal meaning of the phrase" is, of course, the issue. *Fibreboard*, 379 U.S. at 210. Nourishment fits easily

---

[8] *Affirming* 322 F.2d 411 (D.C. Cir. 1963) (*per* Burger, J.), 116 U.S. App. D.C. 198.

[9] Section 8(d) of the National Labor Relations Act, *as amended*, 29 U.S.C. § 158(d), 61 Stat. 136, provides, in relevant part: ". . . to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . ." The full provisions are reproduced in the Appendix to Ford's Brief at A. 1-A. 3.

and comfortably within the statutory definition, and so is a mandatory subject.

Like most aspects of the employment relationship, nourishment comes with tangled sub-issues which, in turn, are entangled with well-established mandatory subjects of collective bargaining. When will employees eat? How much time will they have? Will the employer pay for that time? Where will the employees eat? If they must leave the plant to seek restaurants, how will the logistics of the exodus and entry be handled? Are there sufficient restaurants, given the time? If employees have to eat in the plant, as here, will they have to bring their own lunches? Where will the "brown bags" be kept? Can they be stored out of the reach of vermin? Will the food spoil in the heat of summer? Will the employer provide in-plant food services, as Ford did here? What will those services be? What will be served? Will the portions, quality, cleanliness and efficiency be adequate? How much will it cost the employee and/or employer to have this portion, of that quality, served with a given, clean efficiency?

Ford urges this Court to put the judicial and administrative resources of the United States into the business of perpetually sorting out and weighing these threads. The Court is asked to hold that § 8(d)'s definition requires the litigative isolation of such a thread—say, the price of in-plant food—followed by judicial determination of whether that item has a "significant or material effect on employees' terms and conditions of employment." (Ford Br. 11). Aside from the impracticality of such an enterprise, it is premised on a mistake about the purpose of the Act. As the Court reiterated in *H. K. Porter Co.* v. *NLRB*, 397 U.S. 99 (1970):

> Thus a general process was established that would ensure that employees as a group could express their opinions and exert their combined influence over the terms and conditions of their employment. The Board would act to see that the process worked.
>
> The object of this Act was not to allow governmental regulation of the terms and conditions of employment, but rather to ensure that employers and their employees could work together to establish mutually satisfactory conditions. The basic theme of the Act was that through collective bargaining the passions, arguments, and struggles of prior years would be channeled into constructive, open discussions leading, it was hoped, to mutual agreement. [397 U.S. at 103]

This "basic theme" of the Act is well settled: *NLRB* v. *Borg-Warner Corp.*, 356 U.S. 342, 349 (1958); *I.B.T. Local 24* v. *Oliver*, 358 U.S. 283, 295-6 (1959); *Fibreboard Paper Products Corp.* v. *NLRB*, 322 F.2d 411, 414 (D.C. Cir. 1963) (*per* Burger, J.), 116 U.S. App. D.C. 198, *aff'd* 379 U.S. 203, 210-211 (1964); *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, 163-4 (1971).[10]

---

[10] Section 9(a) of the original Wagner Act contained the phrase "rates of pay, wages, hours of employment, or other conditions of employment." 49 Stat. 453 (1935). When the Taft-Hartley Act was being considered in 1947, a House amendment would have redefined both the scope of the duty, and the test for "good faith." An objective test for "good faith" was proposed, based principally on the number of times the parties met. As to the scope of the duty, the proposal was to limit bargaining to five subject areas. I LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT OF 1947, (G.P.O. 1948) at 163-167, 312-314, 867. The Senate, however, rejected *both* House proposals, leaving the Wagner Act's definition of both scope and "good faith" intact.

Senate opposition was based on the argument that the scope of bargaining "cannot and should not be strait-jacketed by legislative enactment." I LEG. HIST. at 362, 812; II LEG. HIST. at 1339.

Ford quotes selectively from the Conference Report for the proposition that, despite the Senate action, "the intent of Congress was to retain the restrictive approach of the House bill." (Ford Br. 22).

[Footnote continued on page 10]

Ford's approach to § 8(d) demands a program inevitably increasing "governmental regulation." How else, as industrial life evolves, can one determine whether there is a "significant or material effect" for each minutia which falls into dispute between union and employer.

As we shall see, there is a place for the "vital impact" test. *Pittsburgh Plate Glass*, 404 U.S. at 178-82. It cannot govern all cases, or even all "third party" cases, "involving individuals outside the employment relationship." *Pittsburgh Plate Glass*, 404 U.S. at 178-9. It is routine for an employer to use a third party to deliver services or provisions to its work force. Blue Cross delivers health insurance. The bank provides trustee and investment services for the pension plan. The landlord may supply heat; or, as here, a third party may supply nourishment during the workday. That is, the employer may perform its side indirectly, through a surrogate, *i.e.*, a provider. Use of a surrogate-provider does not make the employer any less an "employer" under the Act.[11] Nor does surrogate provision excuse any of the employer's (or union's) statutory duties. It could not be otherwise.

The *other* third-party cases, those *not* involving a surrogate-provider, are the ones amenable to the "vital impact" analysis. In some such cases, the third party is

---

[10] [Continued]

The full statement shows this reference dealt *only* with the House's proposed definition of "good faith"—not the scope of bargaining:

> Hence, the Senate amendment, while it did not prescribe a purely objective test of what constituted collective bargaining, as did the House bill, had to a very substantial extent the same effect *as the House bill in this regard, since it rejected, as a factor in determining good faith, the test of making a concession and thus prevented the Board from determining the merits of the positions of the parties.* [I LEG. HIST. at 538, italicized portion omitted by Ford].

[11] The definition, § 2(2), 29 U.S.C. § 152(2), provides: "The term 'employer' includes any person acting as an agent of an employer, directly or indirectly . . ."

only servicing the entrepreneur (*e.g.* product advertising), and is not, even indirectly, provisioning the employees. In others, delivery to third parties (*e.g.* retirees) does not involve delivery to the bargaining unit, since they are not "employees" within § 2(3), 29 U.S.C. § 152(3). *Pittsburgh Plate Glass*, 404 U.S. at 176.

Such situations do not, as a definitional matter, involve "terms and conditions of employment," since they do not "settle an aspect of the relationship between the employer and employees." *Pittsburgh Plate Glass*, 404 U.S. at 178-9; *NLRB* v. *Borg-Warner Corp.*, 356 U.S. 342, 350 (1958).

Yet this Court has held that, even in this area, there *may* be a bargaining duty in the unusual case—where there is a vital impact on the terms and conditions of employment of the active employees. The Court's discussion of the "vital impact" issue in *Pittsburgh Plate Glass* is in *these* terms, addressed *arguendo* to an alternative holding of the Board.[12] 404 U.S. at 176-82. The Board's use of the standard, like the Court's critical review of that use, *presupposes* that, since retirees are not "employees," [13] the case fell beyond "the relationship between the employer and employees." 404 U.S. at 178-9. There was *no* issue, as there is here, of the employer using a surrogate-provider to deliver to its employees. Instead, the discussion of "vital impact" in *Pittsburgh Plate Glass*, including its treatment of *Fibreboard*, is

---

[12] The primary issue was, of course, definitional: Are retirees "employees" within § 2(3) of the Act, 29 U.S.C. § 152(3)? Against the possible loss of the definitional issue, the Board had gone on to hold, in the alternative, that there was a vital impact on active employees. 404 U.S. at 176-7.

[13] For the Board, this was an *arguendo* presupposition. For the Court, it was not.

occasioned by a distinct (and more difficult) sort of third-party situation—benefits for third-party non-employees, and third-party service to the entrepreneur. This is not the situation presented here. It was, however, the situation presented in *Fibreboard* and *Oliver*, the two cases used in the "vital impact" analysis in *Pittsburgh Plate Glass*, 404 U.S. at 178-82. The third-party contractor in *Fibreboard* fell beyond the employer/employee relationship, since it only supplied production to Fibreboard. 379 U.S. at 224 (Stewart, J., *concurring*). Nevertheless, the Court held that, for the particular type of "contracting out" involved,[14] there was a sufficiently serious effect on the bargaining unit, relying on *Oliver*. 379 U.S. at 212-15. *Oliver* itself involved a third-party owner-driver,[15] whose rental rates, if inadequate, would have subverted the wage structure for employed drivers. 358 U.S. at 294. Mr. Oliver was not supplying the employees anything. On the contrary, he was supplying the employer at the bargaining unit's expense. The Court in *Pittsburgh Plate Glass* was quite correct in limiting "the principle of *Oliver* and *Fibreboard*," *i.e.*, the "vital impact" test, to the unusual case where:

> . . . the question is not whether the third-party concern is antagonistic to or compatible with the interests of the bargaining unit employees, but whether it vitally affects the 'terms and conditions' of their employment. [404 U.S. at 179]

[14] Tantamount to "the replacement of employees in the existing bargaining unit with those of an independent contractor to do the same work under similar conditions of employement. . ." 379 U.S. at 215.

[15] Mr. Justice Whittaker would have held that owner-drivers are not "employees," without reaching the "impact" issue. 358 U.S. at 297-8. The majority in *Oliver* did not reach the definitional issue. 404 U.S. at 178. *Pittsburgh Plate Glass* discusses *Oliver* on the clear assumption that Justice Whittaker was right about the definitional issue. The presence of a "vital impact" in *Oliver* nevertheless required the Court to venture further than Justice Whittaker preferred.

Pittsburgh Plate Glass is that sort of third-party case, but this case, as it involves a surrogate-provider to the employees, is not. Of course, despite the relevance of the *Oliver* and *Fibreboard* principle to *Pittsburgh Plate Glass*, the Court concludes that the asserted impacts are "too speculative." 404 U.S. at 182.

Here, in the nature of the case, there is no need to reach, disentangle, or weigh the "impact" issue. Much less, should the Court embark on a general program of doing so. This case is simple by comparison to this Court's earlier cases, as it involves only the "physical dimensions" of work. *Washington Aluminum* controls here. There is no occasion to expand the "vital impact" analysis to the entirety of § 8(d), as Ford urges. That principle was born to handle the unrelated and more difficult problems presented by *Oliver*, *Fibreboard*, and (*arguendo*) *Pittsburgh Plate Glass*. Its use in the surrogate-provider context would spawn nothing but more litigation and regulation. At least where, as here, the issue is the "physical dimensions" of the employer/employee relationship, those problems should be left where Congress intended—at the bargaining table.

II

The interment of Ford's remaining arguments follows directly:

Ford does not begin at the beginning. The first question is whether nourishment, and its sub-issues, are "physical dimensions" of work, and so within the statutory wording of § 8(d). Ford skips this issue, and begins with a logically *secondary* issue—if nourishment is not a term or condition, is there enough "vital impact" under *Fibreboard* and *Pittsburgh Plate Glass* to make the subject mandatory? Beginning with the secondary issue is wrong for several reasons: It begs, rather than answers, the issue before the Court: the logically prior issue,

whether nourishment is a "physical dimension" of work, and within § 8(d). And, as we have seen, through a misreading of prior cases, it commits the Court to extending the "vital impact" analysis to the entirety of § 8(d), moving the debate from the bargaining table to the courtroom.

The existence of ARA here is irrelevant because, as the record makes obvious, ARA is only a surrogate, *i.e.*, a third party through which Ford is delivering a "physical dimension" of the working environment in its Chicago plant. It is as if, in *Washington Aluminum*, the company had contracted to buy steam heat from a third party, rather than operating its own boiler. This Court's holding that heat is a term and condition of employment cannot be dependent on how the employer chooses to supply the heat, whether directly or through a surrogate.

Surrogate-provider arrangements are as common to industry as are daffodils to a springtime park. Virtually all benefits are provided through such arrangements, *e.g.*, medical, disability, life, dental, vision, drug, and (now even) legal insurance. Guard agencies provide security. Others handle maintenance or sanitation. Utilities supply heat and light. Banks provide fiduciary services for pension and welfare benefits. Surrogate provision is as essential as it is common. Without such "mass" provision, with its economies of scale, most of the benefits now enjoyed by our population would be impossible.

Yet this is the first time that it has *ever* been suggested to this Court that, *because* a surrogate-provider is chosen, what is provided (in some sense) ceases to be a term and condition of employment. This is a disquieting and even revolutionary suggestion. Forty years of collective bargaining, and several provider industries, have been built on the contrary assumption.

Ford complains that, having chosen ARA as its surrogate, it lacks enough control over nourishment to meet a bargaining duty. This overstates the burden of that duty. It is *only* a duty to bargain, *not* to agree. *H. K. Porter*, 397 U.S. at 106, and cases cited. A prudent party will not agree to something it cannot deliver. To compel agreement is beyond the Board's authority, and the Act's intent:

> [I]t is 'clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements.' [*H. K. Porter*, 397 U.S. at 106, *quoting NLRB* v. *Am. Nat. Ins. Co.*, 343 U.S. 395, 404 (1952)]

In any event, on this record, Ford's worries are contrived. Since 1967, Ford has bargained, agreed and (through its surrogate) delivered on virtually all aspects of nourishment, save prices.

If, in other cases, there were evidence of "lack of control" or "futility," there would also be a place to make the argument—at the bargaining table. Though important, these arguments go to relative bargaining strength, *not* to the propriety of bargaining. They are good arguments, if sound, for not agreeing to impossibility. But they are no substitute for the discussion essential to determining whether that problem exists, or can somehow be avoided. "Futility" arguments, if immunized from the adversary process, are notoriously speculative.

The Board and the courts have no place in weighing relative bargaining strength, even indirectly. *H. K. Porter*, 397 U.S. at 106. If the government somehow gets entangled in that enterprise, "futility" is nothing more than a remedial issue. It does not go to the existence of statutory duty. Thus, for instance, in *Fibreboard*, the employer argued that it was an undue burden

for the Board to require termination of the agreement with the maintenance contractor. That contract was terminable on 60-days notice, exactly as is ARA's here. 379 U.S. at 216 n.10. This Court saw no difficulties with the remedy, 379 U.S. at 216-217. Here, of course, the Board is not requiring termination of the Ford/ARA contract, only that Ford and the UAW bargain *after the fact* about matters which may be encompassed in it. This case is *a fortiori*.[16]

Ford's argument,[17] even posed properly as a remedial issue, offends the purpose of the Act. Ford wants indirect governmental regulation of the bargaining

[16] Ford says it is bereft of guidance as to the scope of the Board's order here. (Ford Br. 35-6). But Ford failed to raise the specificity of the order as an issue before the Board, the Court of Appeals, or in its petition for *certiorari*. At the Board and the Court of Appeals, Ford argued *only* that its refusal was limited to prices. (Pet. A. 24).

[17] Ford takes some perplexing positions. If Ford is right, and these matters are not mandatory subjects, then Ford stands in danger of losing up to $52,000 a year on the food operation. If that loss is caused by consumer dissatisfaction, one would think it in Ford's self-interest to be able to bargain with those consumers, and mitigate the loss. Yet, if this area is permissive rather than mandatory, the Union can refuse to talk about the problems. The bargaining duty is mutual. If Ford has no duty, the Union has no duty. There is nothing Ford could do to make the Union bargain on a permissive subject. It is ironic that this helplessness, a corollary of Ford's own position, could subject it to a $52,000 annual loss.

Ford also argues that the remedy for price increases should be wage bargaining. (Ford Br. 15, 21, 26). This is a strange position, as it disproves Ford's case. It acknowledges, by implication, that nourishment issues come within the statutory definition of "wages." § 8(d), 29 U.S.C. § 158(d). *Inland Steel Co.* v. *NLRB*, 170 F.2d 247, 251 (7th Cir. 1948), *cert. den.* 336 U.S. 960 (1949). That aside, since most fringe benefits "have their price," *i.e.*, can be privately purchased, such an approach would eliminate fringe benefits as mandatory subjects of bargaining.

Ford's "lack of control" argument oddly infers that it has little control over its property, and those who enter on it. *Contrast: Marshall* v. *Barlow's Inc.*, —— U.S. —— (1978), 98 S.Ct. 1816; *Sears Roebuck & Co.* v. *The San Diego Co. Dist. Carpenters*, —— U.S. —— (1978), 98 S.Ct. 1745.

strength of the parties, under the guise of assaying "control" or "futility." Even remedial regulation of bargaining strength is beyond the pale. This Court, in *H. K. Porter*, reversed the Board and the D.C. Circuit for a comparable attempt:

> It is implicit in the entire structure of the Act that the Board acts to oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties. It would be anomalous indeed to hold that while § 8(d) prohibits the Board from relying on a refusal to agree as the sole evidence of bad-faith bargaining, the Act permits the Board to compel agreement in that same dispute. The Board's remedial powers under § 10 of the Act are broad, but they are limited to carrying out the policies of the Act itself. [397 U.S. at 106-8, footnote omitted]

The courts are, of course, similarly limited to the policies of the Act.

III

Ford correctly observes that industrial peace is a central goal of the Act. A bargaining duty, we are told, will disrupt that peace by imposing the chaos of perpetual bargaining on trifles. These are but trepidations of counsel.[18]

Since 1967, Ford has come to bargain about and live with every aspect of the nourishment issue, except prices.

[18] Ford theorizes that, in a multi-union context, bargaining on nourishment is "all the more infeasible." (Ford Br. 14, 34). But this has never been a material issue where other "physical dimensions" are involved. Presumably, if it is 15° F. in the workplace, the affected employees have a right to bargain, regardless of the number of labor organizations. *NLRB* v. *Washington Aluminum Co.*, 370 U.S. 9 (1962). To excuse the duty to bargain about "physical dimensions" on this ground would fundamentally restructure the Act. In any event, this record only involves one employer, and one union, at one plant.

There is no "chaos" or "perpetual bargaining" in the record.[19]

On the contrary, this record shows exactly what Congress intended—the "mediatory influence" of institutionalization, arrived at by bargaining:

> One of the primary purposes of the Act is to promote the peaceful settlement of industrial dispute by subjecting labor-management controversies to the mediatory influence of negotiation. The Act was framed with an awareness that refusals to confer and negotiate had been one of the most prolific causes of industrial strife. [*Fibreboard*, 379 U.S. at 211, footnote omitted]

Negotiated methods and procedures are particularly effective ways to handle the disputes of industrial life. Creation of "industrial self-government," as the Chief Justice has observed, is the key to the Act's success:[20]

[19] The UAW conducted a survey of the 101 separate units covered by Local Agreements within the UAW-Ford national bargaining unit. Responses were received from 50. Forty-one indicated that their Local Agreements contain provisions dealing with some aspect of nourishment, normally food services.

Ford claims that labor agreements are "uniformly silent with respect to in-plant food prices" (Ford Br. 13). The support is its review of "many" sample agreements in the BNA's loose-leaf service, COLLECTIVE BARGAINING NEGOTIATIONS AND CONTRACTS §§ 20-30. (Ford Br. 29). This service, in fact, contains only nine labor agreements. Eight of these labor agreements are so-called "master" or "national" contracts. By their nature, such master or national agreements do not deal with items of purely local focus, such as food. These areas are left for the local agreement, as here.

[20] *See: Fibreboard*, 379 U.S. at 214: "[A]lthough it is not possible to say whether a satisfactory solution could be reached, national labor policy is founded upon the Congressional determination that the chances are good enough to warrant subjecting such issues to the process of collective negotiation." *See also:* A. Cox, *The Duty to Bargain in Good Faith*, 71 HARV. L. REV. 1401, 1412 (1958): "Participation in debate often produces changes in a seemingly fixed position either because new facts are brought to light or because the strengths and weaknesses of the several arguments become

> The purpose of imposing legal duties upon employers to meet and bargain with the representatives of employees is to create a structure of industrial self-government for a particular plant arrived at by consensual agreement between management and employees within the framework of the statute. *See*: *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 580-81 (1960). By guaranteeing employee participation in decisions relating to wages, hours, terms and conditions of employment, Congress made a determination that this would create an environment conducive to industrial harmony and eliminate costly industrial strife which interrupts commerce. [*Fibreboard, below*, 322 F.2d 411, 414 (D.C. Cir. 1963), 116 U.S.App.D.C. 198]

Where the stakes are small, as Ford urges they are here, a refusal to talk is all the more uncivil.

It cannot be denied that, in absolute terms, many aspects of industrial life are picayune. This is so from both the management and the employee points of view.[21]

apparent. Sometimes the parties hit upon some novel compromise of an issue which has been thrashed over and over. Much is gained even by giving each side a better picture of the strength of the other's convictions. The cost is so slight that the potential gains easily justify legal compulsion to engage in the discussion."

[21] Management's right to discipline typically extends to very minor matters, *e.g.*, dropping bolts, leaving hand tools around, making a little too much scrap, not cleaning up your area promptly, or being slow about obeying directions. In *Anheuser-Busch Inc.* v. *IBT Local 633*, 511 F. 2d 1097 (1st Cir. 1975), *cert. den.* 423 U.S. 875 (1975), the employer promulgated a rule forbidding the employees from wearing "tank-tops" in large areas of the plant. The Company was worried that members of the public, touring the plant, would be offended by the "beer bellies" exposed to view by that attire. There was a work stoppage, and, in reviewing the injunction, the First Circuit was moved to observe that "[t]his tempest has been brewed in a very small teapot." 511 F. 2d at 1098. Yet no one suggested that, because the dispute was minor (and perhaps silly), it fell beyond the parties' bargaining duty. Indeed, the First Circuit quite sensibly thought bargaining and arbitration was a much better forum than the federal courts. Any experienced labor lawyer,

Like more serious matters, these are resolved by negotiation and arbitration. The parties' settled procedures can categorize and solve the issue on the plant floor, without involving higher management or labor representatives. Contractual agreement most often forecloses reopening of the substantive issue for the term of the labor contract, generally three years. The agreement may establish a procedure, or set a progression of changes occurring over its term. Triviality, where it exists, argues for *more* bargaining and "self-government," not less. For, if it is not handled by the parties, the alternative will be governmental regulation. If, as a matter of law, triviality destroys the bargaining duty, industrial relations, especially in the area of discipline, will be radically altered.

But let us assume the worst. Assume *arguendo* that the parties are petty, and fall into economic warfare over the smallest matters. The Act contemplates economic combat, and does *not* allow governmental intervention on that ground alone.[22] As this Court taught in *H. K. Porter*, reversing the D.C. Circuit's intervention:

> But the Act as presently drawn does not contemplate that unions will always be secure and able to achieve agreement even when their economic position is weak, or that strikes and lockouts will never result from a bargaining impasse. It cannot be said that

whether on the management or union side, has had innumerable picayune problems resolved by bargaining, without burdening the courts. Can men be naked to the waist in a St. Louis assembly plant in the summer, or must they wear "T-shirts" for modesty's sake? Does it offend propriety for women employees to clean the men's bathroom, or *vice versa?* How long can hair be worn? Ford itself once disciplined a woman employee for wearing *red* slacks. The arbitrator, Dean Shulman of Yale, had to decide whether that color constituted a production hazard because of its asserted tendency to distract male employees. Shulman, OPINIONS OF THE UMPIRE (FORD MOTOR CO.), Opinion A-117 (1944).

[22] *See:* Harlan, J., *concurring*, in *NLRB* v. *Borg-Warner*, 356 U.S. 342, 358 (1958); and *NLRB* v. *Am. Nat. Ins. Co.*, 343 U.S. 395, 408-9 (1952).

> the Act forbids the employer or a union to rely ultimately on its economic strength to try to secure what it cannot obtain through bargaining. It may well be true, as the Court of Appeals felt, that the present remedial powers of the Board are insufficiently broad to cope with important labor problems. But it is the job of Congress, not the Board or the courts, to decide when and if it is necessary to allow governmental review of proposals for collective-bargaining agreements and compulsory submissions to one side's demands. The present Act does not envision such a process. [397 U.S. at 109]

Industrial self-government may fail, even over small matters. But parties foolish enough to let that happen, as the Act now stands, only embroil themselves—not the Board and the courts. Even in the worst case, the Act does not contemplate judicial intervention to instruct the combatants about what is (and is not) trivial. The Act only requires that the battle occur within the boundries of the statutory definition.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be *affirmed.*

Respectfully submitted,

IRVING M. FRIEDMAN
JEROME SCHUR
KATZ, FRIEDMAN, SCHUR & EAGLE, P.C.
7 South Dearborn Street
Chicago, Illinois 60603

JOHN A. FILLION
General Counsel

M. JAY WHITMAN
Associate General Counsel

LEONARD R. PAGE
Assistant General Counsel
International Union, UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Counsel for UAW Local 588

January 16, 1979

ADDENDUM

ADDENDUM

General Counsel Exhibit 2

Survey taken August 27, 1973, between the hours of 2:30 P.M. and 7:30 P.M.

Temperature from Chicago			Temperature outside Plant	
2 P.M.	95	40% H.	2 P.M.	96
4 P.M.	95		4 P.M.	95
5 P.M.	94	40% H.	5 P.M.	95

T.H.I. formula

THI = 0.4 of temp. & humid + 15
70 = most people comfortable
75 = ½ people satisfied
80 = most people un-comfortable

Ex: Temp 98 Humid 65% = 80.2

Location	Temp.	Humid.	Factors
1.1	94	65%	Aisle
1.3	95		Chute
1.5	95		Chute
2.1	95		Not running Aisle
2.3	95		Not running
2 line gap	96		Not running
3.1	97	70%	Aisle
3.3	98		Chute
3.5	97		
3.8	98		
4.1	97		Aisle
4.6	97		
5.1	98		Not running
5.3	100		Chute Not running
5.5	102		Chute
5.6	98		
6.1	98		Aisle
6.3	100		Chute
6.6	101		Chute
6.7	98		
7.1	98	65%	Aisle Not running
7.4	99		
7.5	98		
7.6	100		Chute

General Counsel Exhibit 2—Continued

Location	Temp.	Humid.	Factors
8.1	98		Aisle Not running
8.3	98		Not running
8 gap	98	68%	
9.2	100		Chute
9 Loading	99		
10.3	98		
10 gap	98		
58.4	99		
58 Loading	98		
11.1	98		Aisle
11.2	102		Chute
11.3	99		
12.5	99		
12.5	99		
13 Loading	100		
13.1	98		
13.4	99		
13 gap	99		
14.1	98	65%	Aisle
14.4	98		
15.1	98		Aisle
15.2	101		Chute
15.4	100		Chute
16.1	98		Aisle Not running
16.3	99		
16 gap	98		Not running
17.1	98		Aisle Not running
17.2	100	70%	Chute Not running
17.3	98		
18.1	97		Aisle Not running
18.4	99		Chute Not running
63.1	97		Not running
63.4	97		
63.5	97		
19.1	97		Aisle Not running
19.4	98		
19.6	98		
19 Loading	97		
20.2	98		
20.3	99		
20.5	99		
20 Line weld.	100		
21.1	97		Not running
21.3	98		
21.5	98		

General Counsel Exhibit 2—Continued

Location	Temp.	Humid.	Factors
21 Line weld	97		
22.1	97	70%	
22.2	97		
22.7	98		
22 Loading	98		
23.1	97		Aisle
23.2	98		
23.4	98		
23 Weld	97		
24.1	97		Aisle
24.3	97		
26.1	97		Aisle
26.2	99		Chute
26.4	96		
26 Loading	97		
27.1	97	60%	
27.3	97		
27.5	96		
28.1	96		
28.2	96		
28.4	96		
28.5	97		
29.1	96		
29.3	97		
29.5	97		
29 Loading	96		
Dept. 11		65%	
B.S. 1	97		
Sq. Shear	97		
B.S. 5	98		
B.S. 9	98		
B.S. 11	98		
S.R. 2	98		
S.R. 4	98		
14 Dept.		70%	
S.P. 18	96		Aisle
S.P. 3.2	96		
S.P. 4.1	97		
S.P. 4.6	98		
S.P. 5.4	97		
S.P. 6.3	98		
S.P. 6.7	98		
S.P. 7.2	97		
S.P. 7.6	98		
S.P. 8.4	98		

General Counsel Exhibit 2—Continued

Location	Temp.	Humid.	Factors
S.P. 8.7	97		
Auto. Blankers SP	96		
51.1	97	70%	Aisle
51.3	97		
52.2	98		
52.4	98		
53.2	97		
53.5	97		
54.1	97		
54.5	97		
55.1	97		
55.4	97		Not running
56.2	97		
57.2	98		
57.4	98		
57.6	98		
61.1	98		
61.3	98		
61.4	98		
62.1	98		
62.3	98		
62.4	98		Aisle
64.2	99		
64.4	99		
21 Dept.		65%	
Bumper Assem.			
d.b.c. Frame	98		
Salvage booth	101		
Welding booth	99		Not running
Pre-tact C Frame	98		
Welding booth	101		
Loading area	101		
Truck floor pan			
Loading	99		Not running
C. Frame	99		
747			
#1 C Frame	99		
#2 C Frame	98		
Loading Station	98		
21 Dept. Sm. Parts			
Intrusion Bar	99		
Fender apron	99		
Running board	98		
Car Door Line			

General Counsel Exhibit 2—Continued

Location	Temp.	Humid.	Factors
Loading Station	95		
Sandwich Station	97		
# 2 4 Poster	98		
#1 C Frame	97		
Cowl Top	98		
Rocker Panel	96		
24 Dept.		60%	
Truck Door Line		60%	
#2 C Frame	96		
Sandwich Stat.	96		
Loading Stat.	95		
Hydro Press	99		
Hydro Press Load.	96		
Dash Pan	95		
Floor Pan C Frame	96		
Floor Pan Load	96		
Roof sill	96		
D.B. Cross member	95		Not running
D.B. Door			
Loading Station	96		
C Frame	97		
Re Strike	96		
21 Dept. Break area	97		Aisle
Crane #15	102	45%	
Ship. Break Area	96		
Ship. Area Y-19	95	45%	
Auto Repair Shop	96	50%	
Sheet metal shop	95		
Die Storage Pit	95		
X aisle washroom	95	70%	
K aisle end of 2 line	94		
Basement between 4 & 5	102	72%	
North Break area	94		
Basement between 8 & 9	101	68%	
South Break Area	97		
So. K Aisle washroom	95	70%	
T & D Bay 3	97		
T & D Bay 2	98		

Feeding the Big Captive Customers,

BUSINESS WEEK (October 27, 1975) at 46-54

FEEDING THE BIG CAPTIVE CUSTOMERS

The growing appetitite of factories, schools, hospitals

Soaring costs are only part of the headache for the $27 billion institutional food-service business. In the meals they serve, schools, factories, health-care facilities, airlines, and other institutions deal with a captive market. While that guarantees a continuing group of customers, it also guarantees the same group day after day (with the obvious exception of airlines). So there is a constant problem of providing variety, quality—and yet holding costs down.

It is not easy. Indeed, franchiser Ernest Renaud, president of Long John Silver's seafood restaurants, is building a new headquarters building—without an employee lunchroom. "Even though we are in the restaurant business," says Renaud, "we are not about to cook food for these 150 people five days a week." Apart from the tricky economics of serving a small group, he notes, "employees get mad if they don't like the food, and they take it out on the company by griping. Then if they have other gripes, suddenly you have sagging morale. Institutional feeding can be very sensitive—whether you're serving employees, hospital patients, school children, or whatever." So Renaud is settling for vending machines.

At the same time, specialized "food management" contractors have also been hit hard by the recession—mainly because of their lopsided concentration in office and plant feeding. With combinations of vending machines and manual food service, contractors now account for 70% to 75% of the $10 billion industrial market. That compares with only 10% of the $6 billion health care market and 10% to 15% of the $7 billion education market.

Because of increasingly stiff costs and a fall-off in industrial employment and feeding, profits have slipped at ARA Services, Canteen, Servomation, and other leading contractors. For giant ARA Services, the biggest of the vending and contract feeding companies ($1.2 billion in sales last year), food service now accounts for 71% of total volume but only 55% of earnings. Without the volume economies available to larger contractors, many institutions that handle their own food service are feeling even more of a squeeze.

The commissions gambit

In industrial feeding, many contractors started off on the wrong foot by offering fat commissions to plant and office clients. These often ran 5% to 15% of gross volume. "It wasn't until contractors began analyzing operations that they discovered they were their own worst enemies," says Van Myers, a senior vice-president of Wometco Enterprises Inc., a Miami food-service company. "They were fighting to pay the highest commissions when profits didn't warrant it."

Now most of the larger contractors are cutting back commissions, rewriting contracts with cost-of-product escalators, and even including cancellation clauses of 30 and 60 days. In some instances, ARA and other contractors simply shift to straight management fees. "The client reimburses us for all costs—labor, food, overhead—and pays us a management fee of a percentage of the volume, or perhaps a flat dollar amount," says William S. Fishman, ARA president. This is self-adjusting for inflation and permits the customer to control menu prices.

In return, employee food service often goes from being a subsidized money-loser to a break-even operation—or even a small profit center. Macke Co., for instance, has come up with a Pick 'N Pay counter that offers prepackaged meals, deli platters, sandwiches, and other fast

foods. In terms of sheer volume, Macke claims that Pick 'N Pay moves food twice as fast as vending machines and three times faster than a normal cafeteria. It also cuts labor costs, because all food is prepared in a central commissary. "With Pick 'N Pay," says Joseph P. Kingrey, group vice-president of food and vending services for Macke, "you can take an installation from a 10% loss to 6% profit."

Cost control, however, must be rigid. Wometco's vending division is now so highly computerized that at the end of each day the headquarters office knows what each vending installation sold that day and how much food will be needed the following day. Then each week, the division comes up with a profit-and-loss statement that helps cut down on theft—always a problem for vending companies. "We can tell almost immediately if someone is clipping us," says Vice-President Jose A. Martinez. "If we come up with a cost that is higher than 0.5% of what we think it should be, we get that word right back to our regional managers. And since we are computerizing 10 basic items where the gross profit ranges from 25% to 75%, you can see how closely we watch expenses."

Amid the viscissitudes of the industrial market, many food-service contractors are turning more and more to the educational market. As Earl J. Rosenstein, senior vice-president of Interstate United Corp., notes: "Schools have a much more stable population base. And unlike manufacturing, where layoffs have cut our revenues, we can plan on a long-term basis how to provide for the facility and what revenues to expect." Right now some 25 million youngsters in 88,000 schools are participating in federally supported school lunch programs.

Bidding on schools

Yet because of increasingly tight budgets, school administrators drive a hard bargain. Says one disgruntled

feeding contractor: "You can give the school district a good in-stock position, furnish the exact product when needed, deliver it frozen or whatever, and then the next time around if you are 2¢ too high in your bid, the job will go to somebody else who may not deliver. It can be a lousy business."

George R. Allin Jr., a food administrator for the Arlington (Va.) schools, typifies today's hard-nosed school official. Under heavy budget pressure in the last four years, Allin has helped switch Arlington's schools from on-site meal preparation to centralized kitchens.

Since then, the school system has cut its lunch-program work force by more than half, trimmed wages by 40%, and chopped the Arlington School Board's lunch subsidy from $500,000 a year to $200,000. Allin concedes that something may have been lost in the process, citing the switch to prepackaged meals for elementary-school children. "Take fried chicken," he says. "When you reheat it, there's steam under the foil, so it doesn't come out crispy. It's a little soggy." But he calls that a small price to pay.

On a more limited scale, Armour Food Co. did a similar job for a large state institution for retarded children. The institution had two kitchens serving 900 children. Armour experts suggested closing one kitchen, replacing four conventional ovens with two more efficient convection units, and putting more emphasis on convenience foods. The result: 7,000 sq. ft. of space were turned into critically needed warehousing area, oven cooking time fell 30%, and the work force dropped 20%.

Unlike a few years ago when most contractors offered only variations on the same standard meal packages, many contractors now tailor entire programs to fit a school's needs. Edward Engoron, senior vice-president for marketing at Mannings Inc., cites a recent contract that

Mannings signed with the University of Houston. Two other food-service companies had given up on the university's two cafeterias after losing money. "We sat down and asked students what they wanted to eat," says Engoron. "We found that they didn't want two cafeterias. They wanted soups and health foods, and they wanted McDonald's." So Mannings designed a Jack Armstrong's All-American Burger as part of a fast-food operation, set up a counter for deli and soup offerings, and converted a campus coffee house to a beer-and-wine nightclub. "In the first four weeks of operation this summer," says Engoron, "we did twice the business per week that the other operators did."

No more lobster tails

Volume efficiencies are coming more slowly in the big, lucrative health-care market—mainly because contract specialists have only started penetrating that field. "As labor becomes more and more the critical factor, food management companies will take over," says Edward A. Hurtik, manager of food services for Hospital Affiliates Inc., which owns or manages 65 hospitals. "But right now, give me a good kitchen staff, and we can do the job cheaper."

Nor are the market's needs as simple as some contractors originally thought. John Metz, president and founder of Custom Food Management Systems Inc., notes that when his own company entered the health-care business, he assumed that hospitals could lose their reputation for dull food by simply changing menus. "In the beginning," says Metz, "we even had lobster tails on the menu. Since that time, we've had to eliminate some of our high-cost items. We had to get practical."

On the West Coast, where labor costs in hospital food service runs as much as 15% higher than those in other parts of the country, Kaiser Foundation Hospitals is

approaching the ultimate in elimination. Kaiser's 11 northern California medical centers have done away with all kitchens and most of the associated storage space and equipment. In their place is a system of microwave ovens for cooking flash-frozen entrees. The food is assembled on meal trays at one of Marriott's airline commissaries and delivered daily to each hospital, where the trays are refrigerated until needed. "A typical 250 bed hospital with a large cafeteria might have 40 full-time people in food service," says Florine Allen, Kaiser's dietary consultant. "We have reduced the number to four."

American Medicorp Inc., which owns and operates 45 hospitals, has similar ambitions. It plans to hire professional food-service managers and hospital experts to study all 37 of its in-house food operations, as well as the eight hospital kitchens run by Saga Corp. and Stouffer Corp. Already, Paul D. Powell, American Medicorp's director of purchasing, can tick off the problems: "We should standardize menus, we haven't gotten into convenience foods yet, our distribution system within the hospitals is old-fashioned, and we prepare food in the kitchens the same way we did many years ago."

James Biggar, chairman and chief executive of Stouffer, cites studies showing that "if you give patients good, hot food and they are happier, they get well quicker." In its way, that could even serve as a prescription of sorts for the entire food-service industry. "As long as we deliver a good meal at a fair price and fair return on investment," says Allan P. Lucht, chairman and president of Servomation, "this industry has got to grow and prosper in the years ahead—rising costs or not."

How Ford Motor dishes up 18,000 meals a day

Ford Motor Co. may not be selling a lot of cars these days, but it is selling plenty of employee meals. Every

day Ford dishes up 17,000 to 18,000 meals in 15 Detroit-area locations, bringing in $5 million a year. While this amounts to only 10% of Ford's total employee feeding (the rest is handled by contractors), it still represents one of the largest company-operated programs in the country. Because of this, Ford watches its food service costs just as closely as its manufacturing costs.

As his main offensive tactic, Will O'Sullivan, Ford's manager of food services, has trimmed lunchtime serving hours, dropped bacon and some other pork items from the menu, occasionally substitutes fish or other high-protein items for beef—and seldom hesitates to pass cost increases along to customers. Ford's biggest cost saver is its 100,000 sq. ft. central food processing center. It handles butchering, salad preparation, baking, and other "pre-preparation." Items are trucked from the center to the various plants, where kitchen help cooks the meat, mixes in the salad ingredients, and puts everything on the plate.

Computer help. If Ford needs 3,000 roast beef dinners with baked potatoes for the next day, a computer tells how much to order of what ingredients. "If we need 281 lb. of potatoes," says O'Sullivan, "we don't buy more, hoping to get rid of the excess."

Ford's objective is to break even, he says. "Even with large, highly automated plants with few employees, it's difficult—but not impossible." In an industry as automated and efficient as the auto business, O'Sullivan naturally tends to feel that the level of food-service innovation is lagging. Then he adds hopefully: "But there are changes occurring."

Joint Exhibit 17

PRICE CHANGES

(Effective Monday, February 9, 1976)

Soup (All)	35¢
Milk and Orange Juice	30¢
Entrees (All except below)	55¢
Beef Stew	60¢
Beans and Franks	60¢
Potato Hash & Beef	60¢
Corn Beef Hash	60¢
Cold Food Machine	
Bar B-Q'B (All)	75¢
Bologna (Plain)	55¢
Bologna and Cheese	60¢
Cheese (Plain)	50¢
Cheeseburger	60¢
Chicken, Fried	75¢
Corn Beef	75¢
Egg. Hard Boiled	40
Fish Sandwich with Tartar	60¢
Ham	65¢
Ham and Cheese	70¢
Hamburger	55¢
Hot Dog	40¢
Italian Beef	75¢
Italian Sausage (Plain)	70¢
Italian Sausage with Peppers	75¢
Juices, All Flavors	25¢
Omelet, Cheese	65¢
Omelet, Sausage & Egg	70¢
Pizza	50¢
Polish Sausage, Plain	70¢
Polish Sausage with Peppers	75¢
Poor Boy	70¢
Poor Girl	70¢
Popcorn	50¢
Roast Beef	70¢
Salami	60¢
Salami & Cheese	65¢
Sausage & Biscuit	55¢
Steak & Onions	75¢
Tamale	35¢
Yogurt	50¢
Burritos	55¢

• • • •

Joint Exhibit 18

Entree	Present Selling Price	Increase	Suggested Selling Price	Units Per Day	Sales Increase
Chili	$ .45	$ .05	$ .50	35	$ 1.75
Soup	.25	.05	.30	90	4.50
Entree I	.80	.05	.85	250	12.50
Entree II	.75	.05	.80	160	8.00
Deli Specia[1]	.95	.05	1.00	105	5.25
Vegetable	.25	.02	.27	180	3.60
Small Salad	.25	.02	.27	50	1.00
6 Inch Salad	.35/.50	.05	.40/.55	90	4.50
Salad 9″	.95/1.15	—	—		
Cold Sandwiches	—	—	—	—	—
Hot Sandwiches	.35/.70	.05	.40/.75	90	4.50
Gelatin Cubes	.25	—	—	—	—
Gelatin Molds	.30	—	—	—	—
Pudding	.25	.05	.30	35	1.75
Sweetroll	.25	—	—	—	—
Fried Cake	.25	—	—	—	—
Hard Roll	.15	—	—	—	—
Bread	.04	.01	.05	300	3.00
Layer Cake	.30	.05	.35	50	2.50
Assorted Pies	.40	.05	.45	80	4.00
Coffee	.15	—	—	—	—
Tea	.15	—	—	—	—
Sanka	.15	—	—	—	—
Cold Drinks	.20	—	—	—	—
Ice Cream	.20/.30	—	—	—	—
Buttered Toast	.07	.01	.08	60	.60

Joint Exhibit 18—Continued

Bacon Slice	.15	.05	.20	100	5.00
Sausage Link	.15	.05	.20	70	3.50
Egg	.20	—	—	—	—
Pancake	.15	.05	.20	60	3.00
Butter Pat	.02	—	—	—	—
Soft Ice Cream	.35	—	—	—	—
Biscuit	.10	.02	.12	50	1.00
Milk—1/3 Qt.	.25	.05	.30	120	6.00
Milk—a Pt.	.30	.05	.35	120	6.00
Butter Milk—1/2 Pt.	.20	.05	.25	20	1.00
Skim Milk—1/2 Pt.	.20	.05	.25	10	.50
VENDING:					
Hot Beverages	.15	—	—	—	—
Cold Beverages	.15	—	—	—	—
Gum (5 Stick)	.10	—	—	—	—
Gum (7 Stick)	.15	—	—	—	—
Candy	.15/.20	—	—	—	—
Pastries	.15	—	—	—	—
″	.25	—	—	—	—
″	.30	.05	.35	75	3.75
Snacks	.15	—	—	—	—
Sandwiches	.35/.70	.05	.40/.75	300	15.00
Hot Entrees	.50/.55	.05	.55/.60	225	11.25
Soup	.30	.05	.35	200	10.00
Cigars	.35/.65	—	—	—	—
Ice Cream	.20	—	—	—	—
Crackers	.10	—	—	—	—
Milk—1/3 Qt.	.25	.05	.30	900	45.00
Juice—1/3 Qt.	.25	.05	.30	250	12.50